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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.G. et al., Persons Coming Under the Juvenile Court Law.	B208090
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.P., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK71749)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jacqueline H. Lewis, Juvenile Court Referee. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Denise M. Hippach, Associate County Counsel, for Plaintiff and Respondent.

J.P. appeals from the jurisdictional and dispositional orders made pursuant to Welfare and Institutions Code section 300 regarding M.G.[1] The trial court sustained allegations that J.P. physically and sexually abused M.G. J.P. contends that he did not receive notice of the sexual abuse allegations in violation of his constitutional right to due process. We affirm.

BACKGROUND

Ana G. (Mother) is the mother of M.G. (born 1999) and J.P., Jr. (born 2004). J.P. lived with Mother, M.G., and J.P., Jr. during the period when the abuse discussed below occurred.[2]

On January 24, 2008, police officers arrested J.P. for the offense of willful cruelty to a child (Pen. Code, § 273a) based on allegations that he physically abused M.G. During the police interview, J.P. admitted to striking M.G. with a cable, but claimed he did not intend to leave marks on her body. J.P. pled nolo contendere to the charges and received probation.

On February 26, 2008, the Department of Children and Family Services (DCFS) filed a dependency petition under section 300, subdivisions (a) (serious harm), (b) (failure to protect), (g) (no provision for support), and (j) abuse of sibling. The petition alleged that J.P. physically abused both children by striking them with cables and belts, once locked M.G. in a shed and threatened to light the shed on fire, physically abused Mother, and had a history of illicit use of drugs, including methamphetamines. The petition further alleged that Mother failed to protect the children from serious physical harm and that M.G.'s biological father failed to provide for her basic necessities. At the detention hearing, Mother and J.P. denied the allegations made in the petition; M.G.'s biological

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[1] All subsequent references are to the Welfare and Institutions Code unless otherwise specified. We refer to appellant as J.P. in order to preserve the anonymity of his son, J.P., Jr., who shares the same name.

[2] Neither Ana G. nor M.G.'s biological father is a party to this appeal.

father did not appear. The juvenile court held that DCFS had established a prima facie case that both children were persons described by section 300, subdivisions (a), (b), (g), and (j). The court ordered reunification services for both parents while the children remained in foster care and set the jurisdiction hearing for March 27, 2008.

While in foster care, M.G. acted out sexually by touching herself in the vaginal area and "thrusting" J.P., Jr. while on top of him. When M.G.'s foster mother asked about her behavior, M.G. revealed that, on one occasion, J.P. came into M.G.'s bedroom, removed his pants, removed her pants, touched her vaginal area, and threatened her with physical abuse if she reported his actions to anyone. M.G. later described another occasion during which J.P. "used his pene on [her] pee-pee" and demonstrated a poking motion.

On March 19, 2008, during an interview with J.P. at the DCFS office, case worker Alicia Mena confronted J.P. with the allegations of sexual abuse. J.P. denied touching M.G. in a sexual way and maintained that he avoided hugging and kissing M.G. altogether because she was not his biological daughter. A proof of service signed by Mena shows that on the same day, at 3:30 p.m, Mena personally served J.P. with a document entitled "Notice of Hearing." That notice provided that a hearing on the "First Amended Petition" would be held on March 27, 2008, and indicated that a "true copy of the petition [was] attached to this notice."[3] The First Amended Petition contained the same allegations of physical abuse laid out in the original petition, but added additional allegations of sexual abuse under section 300, subdivisions (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling). The amended petition reflects a signature by Mena dated March 19, 2009.

At the March 27, 2008 hearing, DCFS filed the amended petition. The juvenile court accepted the amended petition and dismissed the original petition. J.P.'s counsel explained that J.P. was present in the courtroom awaiting commencement of the proceedings, but was detained by "law enforcement" before the commissioner had

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[3] The proof of service also shows that Mena sent a copy of the "Notice of hearing" to J.P. at his home address in Fontana on March 17, 2008.

arrived. The juvenile court continued the jurisdictional hearing to May 7, 2008 to provide the parties with additional time to investigate the suitability of placing the children with relatives and J.P. with an opportunity to attend the hearing.[4]

On May 8, 2007, at the jurisdictional and dispositional hearing, DCFS moved into evidence the detention report (dated February 26), the jurisdiction/disposition report (dated March 27, 2008), a supplemental report (dated May 7, 2008), and the prerelease investigation report (dated April 1, 2008).[5] J.P. did not appear, but his counsel argued there was insufficient evidence of sexual abuse.[6] The juvenile court sustained the allegations of physical abuse against J.P. and failure to protect against Mother and struck the allegations of failure to provide support. The court sustained the sexual abuse allegations against J.P., but indicated DCFS should have pleaded the allegations strictly under section 300, subdivision (d), instead of subdivisions (b), (d), and (j). The court amended the sexual abuse allegation to conform to proof as follows: "The children [M.G.]' mother's male companion [J.P.] father of the child [J.P., Jr.] sexually abused the child M.G. The sexual abuse included, but not limited to his touching the vaginal area." The court assumed jurisdiction over M.G. and J.P., Jr. and ordered continued reunification services for Mother and J.P.

DISCUSSION

J.P. contends that the "court's finding under section 300, subdivision (d), must be reversed" because he "did not receive notice of the first amended petition, which was the only petition containing allegations of sexual abuse."

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4 During the interim, the court held hearings on April 1, 2008 to discuss the status of DCFS's pre-detention investigation of maternal and paternal relatives and on May 2, 2008 to deny DCFS's attempt to file a second amended petition.

5 The juvenile court continued the hearing from May 7 to May 8 to accommodate a crowded calendar.

6 According to Mother, immigration services had deported J.P. sometime before the jurisdictional hearing.

"Parents have a fundamental and compelling interest in the companionship, care, custody, and management of their children. [Citation.] '[T]he state also has an urgent interest in child welfare and shares the parent's interest in an accurate and just decision. [Citation.]' [Citation.] To ensure that result, '[u]ntil parental rights have been terminated, both parents must be given notice at each step of the proceedings. [Citation.]'" (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 106.)

"At each hearing under section 300 et seq., the court must determine whether notice has been given as required by law and must make an appropriate finding noted in the minutes." (Cal. Rules of Court, rule 5.534(l).) "Notice is both a constitutional and statutory imperative. In juvenile dependency proceedings, due process requires parents be given notice that is reasonably calculated to advise them an action is pending and afford them an opportunity to defend." (*In re Jasmine G*. (2005) 127 Cal.App.4th 1109, 1114.)

Here, the record contains a proof of service showing that case worker Mena personally served J.P. with a document entitled "Notice of Hearing" at 3:30 pm, on March 19, 2008, the same day that the case worker interviewed J.P. at the DCFS office. This "Notice of Hearing" document provides notice of a hearing for the "First Amended Petition," and indicates that a "true copy of the petition is attached to this notice." The proof of service, which J.P. does not contend is statutorily deficient in any way, creates a rebuttable presumption that service was proper and that J.P. received the documents served (i.e., the Notice of Hearing and the attached Petition). (See *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441-1442 [filing a proof of service that complies with statutory standards creates a rebuttable presumption that service occurred as indicated].)

J.P. points to no evidence to rebut the presumption that he was served with the amended petition. Instead, he contends "the Proof of Service does not show a copy of the petition was served along with the notice of hearing" and "[t]herefore, it cannot be assumed that appellant was served a copy of the petition." (Emphasis omitted.) Without

any countervailing evidence, however, the proof of service *does* show that J.P. was served with a copy of the petition because it was attached to the notice of hearing.

We thus conclude that J.P. received notice of the amended petition and the allegations contained therein. Even if he did not receive the petition, we nonetheless conclude any such error would be harmless. (*In re J.H.* (2007) 158 Cal.App.4th 174, 183 ["[u]nless there is no attempt to serve notice on a parent, in which case the error has been held to be reversible per se [citations], errors in notice do not automatically require reversal but are subject to the harmless beyond a reasonable doubt standard of prejudice"].)

The record plainly demonstrates that on March 19, 2008, more than a month before the jurisdictional/dispositional hearing, the case worker confronted J.P. with M.G.'s allegations of sexual abuse. J.P. denied touching M.G. in a "sexual way" and maintained that he avoided hugging and kissing her altogether because she was not his biological daughter. J.P.'s denial of the sexual abuse allegations and accompanying statements were memorialized in the jurisdictional/disposition report, which the juvenile court received into evidence.

At the jurisdictional/dispositional hearing, Father's counsel vigorously argued that there was insufficient evidence of sexual abuse. We quote from various portions of his argument: "I don't believe that there's sufficient evidence in these reports to indicate that my client actually sexually abused the child . . . . I would like to point out that the child has made inconsistent statements. We don't know what actually happened. Perhaps there were some boundaries that were violated, but I don't believe that it's sexual abuse. . . . Your honor, I would like to direct your attention to the medical findings, which indicate that the hymen is smooth; there's no signs of trauma; discharge or lesions that were noted to her vagina. So I don't think there was actual penetration in this case. And in fact, the findings by the investigator [were] normal genital and anal findings."

The record is clear that J.P. and his counsel had ample opportunity to deny the sexual abuse allegations against J.P. and to direct the court's attention to the evidence

militating in J.P.'s favor.[7] J.P. does not identify any new argument or additional evidence he would have presented had he received a copy of the amended petition. Thus, any error was harmless beyond a reasonable doubt.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

BAUER, J.*

We concur:

MALLANO, P. J. ROTHSCHILD, J.

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[7] *In re Neal D.* (1972) 23 Cal.App.3d 1045 (*Neal D.*), the lead case cited by J.P., is inapposite for this reason. In *Neal D.*, the juvenile court assumed jurisdiction over Mother's two children after it found that her home (a condemned building) was not suitable for minors. (*Id.* at p. 1047.) Once Mother found a new home, she filed a petition to terminate the court's jurisdiction along with an affidavit from a social worker who attested that the new home was suitable for minors. The county filed a supplemental report that "did not dwell upon the suitability of the home," but instead raised "completely new circumstances," such as Mother's "[p]hysical, mental, emotional and social problems." (*Id.* at p. 1048.) The juvenile court denied Mother's petition to terminate jurisdiction based on the new circumstances raised by the report. The Court of Appeal reversed, holding that Mother and all other interested parties had a due process right to be "apprised of the [new] allegations" so they could "be prepared to meet" them. (*Id.* at p. 1050.) Here, in stark contrast, Father was apprised of the sexual abuse allegations well before the jurisdictional hearing and he had ample opportunity to prepare his defense.

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article, section 6 of the California Constitution.